COMMITMENT
INTEGRITY
LEADERSHIP

November 17, 2022
Report 2021-047
FACT SHEET

Michael S. Tilden, CPA *Acting State Auditor*

CONTACT: *Public Affairs Office* | *(916) 445-0255*

Native American Graves Protection and Repatriation Act

Despite Some Recent Improvements, the University of California Has Not Yet Taken Adequate Action to Ensure Its Timely Return of Native American Remains and Cultural Items

Background

The 1990 Native American Graves Protection and Repatriation Act (NAGPRA) protected Native American gravesites and created a process by which federally recognized tribes can request from government agencies and museums the return of their human remains and cultural items. In 2001 California enacted CalNAGPRA, which provided a mechanism for California tribes that do not have federal recognition to submit repatriation claims to agencies such as the University of California. The Legislature amended CalNAGPRA in 2018 in response to allegations from stakeholders that the university had a poor record of completed repatriations and that participation by tribes in the repatriation process had been limited, and a 2020 amendment further improved the repatriation process.

Key Findings

- The Office of the President has not taken adequate action to ensure that campuses have the guidance and resources necessary to repatriate their collections in a timely manner.
- More than 30 years after the passage of NAGPRA, many campuses still have large collections of Native American remains and cultural items because of their historical struggle to inventory and repatriate these collections.
- Some campuses are still discovering remains and cultural items that are in their possession, and they have used inconsistent approaches when repatriating their recently discovered items and consulting with tribes.
- Even though CalNAGPRA creates specific requirements for tribal participation when campuses inventory their collections, campuses used different processes to consult with tribes in this area.
- Not all campuses have full-time repatriation coordinators with appropriate experience.
- In the absence of an established deadline for campuses to complete repatriation plans, which will guide campus repatriation activity, none of the campuses we reviewed have done so.
- Although the Office of the President requires campuses to include detailed budgets in their repatriation plans, it has not ensured that they dedicate adequate funding for timely repatriation.
- Additional flexibility in state law would better enable the nomination of appropriate members to the campus and university NAGPRA committees.

Key Recommendations

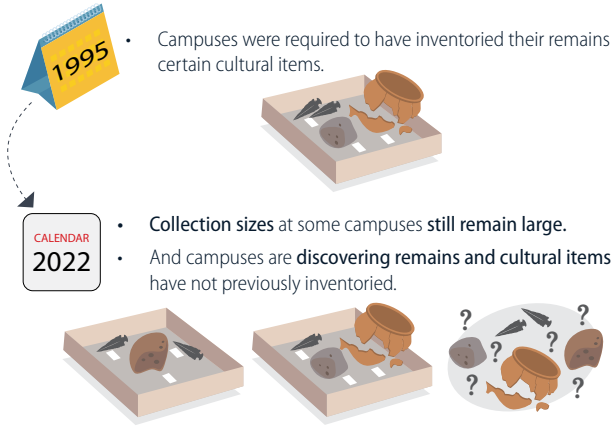
The Legislature should amend:

- State law to require the university to periodically report its campuses' progress toward completing repatriation and require the Office of the President to provide sufficient funding to support campuses' repatriation efforts.

The UC Office of the President should do the following:

- Establish a uniform process that campuses must follow when consulting with tribes about inventories.
- Require campuses to complete and submit to the NAGPRA committees detailed repatriation plans with budgets that identify adequate funding sources.

Inaction by the UC Office of the President in areas of guidance and financial support have contributed to these problems …


1995
Campuses were required to have inventoried their remains and certain cultural items.
CALENDAR
2022
Collection sizes at some campuses still remain large.
And campuses are discovering remains and cultural items they have not previously inventoried.

… and without corrective action, the university risks that it will take more than a decade before remains and cultural items are fully repatriated.

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CALIFORNIA STATE AUDITOR
621 Capitol Mall, Suite 1200 | Sacramento | CA | 95814

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November 17, 2022
2021-047

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As required by Health and Safety Code section 8028, my office conducted its second audit of the University of California's (university) compliance with the federal Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) and its 2001 California counterpart, CalNAGPRA. These acts establish requirements for the repatriation of Native American human remains and cultural items (remains and cultural items) to tribes by government agencies and museums—which include the university's campuses—that maintain collections of remains and cultural items. This report concludes that, although the university has made improvements since my office's 2020 audit, it must still take additional action to ensure the timely return of Native American remains and cultural items.

We reviewed the university's campuses at Berkeley, Riverside, Santa Barbara, and San Diego and found they continue to maintain large collections and that some have yet to completely review all the remains and cultural items in their control. Because of the size of some of these campuses' collections, they will likely not fully repatriate their collections for at least a decade. In fact, the university's Office of the President has not yet ensured that campuses have the guidance necessary to return their collections in a timely and consistent manner. Although some campuses, such as Berkeley, have made recent progress in repatriating their collections, both Riverside and San Diego recently discovered large collections of remains and cultural items of which they were previously unaware. Because the Office of the President has not ensured consistency in how campuses respond to newly discovered collections, tribes have reported having different experiences when working with campuses to reclaim their ancestors, which created an unnecessary level of frustration and complexity for those tribes.

Additionally, the Office of the President has not ensured that campuses prioritize completing their repatriation implementation plans. Since July 2020, the Office of the President has required campuses to create these plans, but it did not set a deadline for their completion. In the absence of a deadline, the four campuses we reviewed have yet to complete them as of mid-October 2022. Finally, campuses have not formally committed to providing long-term, sustainable funding for their repatriation-related activities. Nor has the Office of the President dedicated funds beyond fiscal year 2022–23 to support campuses' repatriation activities. Because of the uncertainty surrounding the funding necessary to support campuses' repatriation efforts, we believe this approach is shortsighted and may undermine recent efforts by the university to further repatriation.

Respectfully submitted,

MICHAEL S. TILDEN, CPA
Acting California State Auditor

Selected Abbreviations Used in This Report

Board of Regents	Regents of the University of California
NAGPRA	Native American Graves Protection and Repatriation Act
NAHC	California Native American Heritage Commission
Office of the President	University of California Office of the President
remains and cultural items	Native American human remains and cultural items
university	University of California

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Summary

Results in Brief

The 1990 federal Native American Graves Protection and Repatriation Act (NAGPRA) and its 2001 California counterpart (CalNAGPRA) establish requirements for the protection of Native American graves and the treatment and return of Native American human remains and cultural items (remains and cultural items) from the collections of government agencies and museums. In California, the University of California (university) has historically maintained a significant collection of hundreds of thousands of remains and cultural items. NAGPRA prescribes a process for entities with such collections to *repatriate*, or return, them to tribes that can demonstrate a relationship to them. Once entities return remains, some tribes may choose to rebury them because those tribes believe that the spirits of their ancestors cannot rest until they are properly buried.

In 2020 our office published an audit report of the university's compliance with NAGPRA and CalNAGPRA. The report found that the university's Office of the President (Office of the President) had established inadequate policies and oversight that had resulted in inconsistent practices for returning such remains and cultural items to tribes.[1] The report included four recommendations for improving the university's NAGPRA implementation efforts, which the Office of the President has since implemented. Nonetheless, more than 30 years after the passage of NAGPRA, the university has not adequately prioritized returning its collection to tribes. We reviewed four of the university's campuses for this audit—Berkeley, Riverside, Santa Barbara, and San Diego—and found that they continue to maintain large collections and that some campuses have yet to completely review all the remains and cultural items in their control. Given the size of some of these collections, returning all their remains and cultural items to tribes will likely take at least a decade of sustained effort.

We are particularly concerned that the Office of the President has not yet taken adequate action to ensure that campuses have the guidance necessary to repatriate their collections in a timely and consistent manner. For example, both Riverside and San Diego recently discovered large collections of remains and cultural items—some of which were stored inappropriately—that they had not previously reported. However, the Office of the President has not ensured consistency in how campuses respond to newly

Audit Highlights . . .

Our audit of the University of California's compliance with NAGPRA and CalNAGPRA found that the four campuses we reviewed and the university's Office of the President have still not taken sufficient action to return to tribes their Native American human remains and cultural items:

- ***Campuses have not satisfactorily prioritized inventorying and returning their collections to tribes.***
- ***The Office of the President has not provided the guidance necessary for campuses to repatriate their collections in a consistent and timely manner.***
- ***Campuses have not initiated consultation with tribes, as CalNAGPRA requires.***
- ***It will likely take at least a decade of sustained effort to affiliate and repatriate all items in these sizable collections.***

We reached similar conclusions in our 2020 audit, which reported that the Office of the President had established inadequate policies for and oversight of campuses' return of remains and cultural items.

[1] *Native American Graves Protection and Repatriation Act: The University of California Is Not Adequately Overseeing Its Return of Native American Remains and Artifacts*, Report 2019-047, June 2020.

discovered collections. As a result, tribes may have different experiences when working with campuses to reclaim their ancestors, creating an unnecessary level of complexity and possible frustration.

The Office of the President also did not ensure that campuses initiated consultation with tribes when inventorying their collections, as CalNAGPRA requires. In the absence of such guidance, some campuses have begun consultations with tribes earlier than others, and Santa Barbara has hosted multiple listening sessions with California tribes but has yet to initiate the required consultation on a number of items. Moreover, the Office of the President does not require campuses to employ full-time repatriation coordinators despite the critical role they serve in advancing repatriation and maintaining useful relationships with the tribes.

The Office of the President has not ensured that campuses prioritize completing their plans to facilitate the return of their NAGPRA collections. Since July 2020, the Office of the President has required campuses to create repatriation implementation plans (repatriation plans) that include specific timelines and strategies. However, it did not set a deadline for completing these plans. The four campuses we reviewed have not yet completed their plans as of mid-October 2022, more than two years later. Without requiring campuses to develop their plans by a given deadline, the Office of the President is risking that campuses will not take a proactive, strategic, and timely approach to returning remains and cultural items to the tribes.

Finally, campuses have not planned for sustainable long-term funding of their repatriation efforts. The Office of the President provided funding to campuses for two years beginning in fiscal year 2021–22, but it expects campuses to use their own funding for repatriation after fiscal year 2022–23. To address the importance of NAGPRA and CalNAGPRA, along with the significant requirements these laws impose on the university, the Office of the President could dedicate funds to support campuses' repatriation activities. However, it has chosen not to do so following fiscal year 2022–23. In the absence of such an action, the funding that campuses have currently identified for repatriation is inadequate and will likely add years to the already delayed return of remains and cultural items to California tribes.

Recommendations

The following are the recommendations we made as a result of our audit. Descriptions of the findings and conclusions that led to these recommendations can be found in the Audit Results section of this report.

Legislature

To ensure that the university continues its recent progress in returning remains and cultural items to tribes, the Legislature should amend state law to require the university to periodically report its campuses' progress towards completing repatriation.

To ensure that campuses have adequate funding to fully repatriate their collections in a timely manner, the Legislature should amend state law to require the Office of the President to provide sufficient funding to support campuses' repatriation efforts.

To ensure that the systemwide and campus NAGPRA committees have members with diverse backgrounds, the Legislature should revise CalNAGPRA to allow individuals with more types of educational backgrounds to qualify for committee membership.

University

To ensure that Santa Barbara has identified all the items in its NAGPRA collection, the Office of the President should monitor Santa Barbara's efforts to review its collection and ensure that the campus completes this process by July 2023.

To ensure that campuses appropriately respond to any remains or cultural items they find in the future, the Office of the President should issue guidance by February 2023 about how campuses should proactively work with partner institutions to facilitate repatriation of those items.

To ensure that its campuses comply with CalNAGPRA and appropriately consult with California tribes, the Office of the President should immediately establish a uniform process that campuses must follow when consulting with tribes about the campuses' inventories.

To ensure that campuses provide appropriate resources and oversight to the administration of NAGPRA and CalNAGPRA, the Office of the President should require campuses with more than 100 sets of remains or cultural items to have full-time repatriation coordinators by July 2023.

To ensure that campuses fully repatriate their collections in a timely and consistent manner, the Office of the President should require the campuses to complete and submit detailed repatriation plans by February 2023 for review and approval by the campus NAGPRA committees and review by the systemwide NAGPRA committee. The repatriation plans should include a detailed budget.

Until such time that the Legislature requires the Office of the President to provide funding to support campus repatriation efforts, the Office of the President should ensure that campuses identify adequate funding sources in their detailed budgets.

Agency Comment

The university agreed with our recommendations and indicated that it would implement them to improve its policies and practices.

Introduction

Background

The U.S. Congress passed the Native American Graves Protection and Repatriation Act (NAGPRA) in 1990 to protect Native American gravesites and to create a process by which Native American tribes with ancestral, cultural, or geographic links to human remains and cultural items (remains and cultural items) can request their return from government agencies and museums. The entities' control of these remains and cultural items has often stemmed from past archeological research on lands historically occupied by Native American tribes. In other instances, remains and cultural items have been excavated during construction projects.[2] The text box describes the types of remains and cultural items and actions that NAGPRA covers. NAGPRA applies to tribes that are recognized by the U.S. Department of the Interior, which is responsible for identifying tribes that are eligible to receive services from the federal government.[3] More than 30 years after the passage of NAGPRA, entities—including the University of California (university)—continue to repatriate remains and cultural items to Native American tribes.

Summary of Key NAGPRA Terms

Types of remains and cultural items subject to NAGPRA:

- Human Remains—Physical remains, including bones, of people of Native American ancestry.
- Funerary Objects—Objects such as stones and beads placed with or near remains as part of a death rite or ceremony.
- Sacred Objects and Objects of Cultural Patrimony—Ceremonial objects or items such as prayer sticks or animal skins that have ongoing cultural importance to tribes.

Types of actions in the repatriation process:

- Affiliation—Identifying remains or cultural items as belonging to a federally recognized tribe.
- Repatriation—Returning remains or cultural items to the affiliated tribe.

Source: Federal law.

NAGPRA Established a Process for Entities to Affiliate and Repatriate Remains and Cultural Objects

During the 1990s, NAGPRA required entities, such as a university that had remains and cultural items, to compile an inventory of specified items by certain dates. The four campuses we reviewed for this audit—Berkeley, Riverside, Santa Barbara, and San Diego—have historically had remains and cultural items subject to NAGPRA. The campuses have generally maintained these in on-campus museums or repositories that are not open to the public. To complete its NAGPRA-required inventory, each university campus was responsible for consulting with all federally recognized tribes that might have cultural or geographic links to the remains or cultural items it controlled. NAGPRA required that each campus then evaluate the information from this consultation, along with biological, archeological,

2 Since 2015 state and local public agencies that have principal responsibility over certain construction projects subject to the California Environmental Quality Act must follow certain requirements when they discover Native American remains and cultural items. Specifically, they are required to avoid damaging tribal cultural resources when feasible and to consult with Native American tribes located in the area of a project about measures to preserve or mitigate impacts of the project. This approach limits the addition of new items to collections of remains and cultural items at agencies.

3 NAGPRA also applies to Native Hawaiian organizations; however, our report focuses on Native American tribes.

anthropological, geographic, kinship, linguistic, folklore, and historical evidence. Based on this evaluation, the campus was then to determine whether it could reasonably trace a relationship between the remains or cultural items within its collection and a specific tribe, a process known as *affiliation*. Federal regulations require a campus to base its determination of affiliation on a preponderance of the evidence, meaning that the remains and cultural items are more likely than not affiliated with the tribe in question. After completing its inventory, the campus then was to send information from the inventory to those tribes for which it had established affiliation.

Each campus also had to report its inventory to the national NAGPRA program. The National Park Service, which is a bureau of the U.S. Department of the Interior, administers that program. In addition to its other duties, the national NAGPRA program is responsible for drafting regulations to implement NAGPRA, administering grants to museums and tribes for fulfilling NAGPRA, assisting excavations that discover remains or cultural items on federal or tribal land, and maintaining a database of NAGPRA inventories. Federal law generally required entities such as a university to complete their inventories by 1995.[4]

Major Repatriation Eligibility Requirements

To be eligible for repatriation under NAGPRA, remains or cultural items claimed by a tribe must meet the following requirements:

- Be under the legal control of the agency from which the tribe is requesting return of the remains or cultural items.
- Were not obtained from a person that the tribe had authorized to voluntarily give or sell the remains or cultural items.
- If human remains, be proven to be of a person of Native American ancestry. Cultural items must have a proven cultural affiliation.

Source: Federal law.

A federally recognized tribe may obtain the return of its ancestors' remains and cultural items by submitting a repatriation claim for the affiliated items. The text box summarizes the major repatriation eligibility requirements. Under NAGPRA, after a campus affiliated remains or cultural items with a federally recognized tribe or tribes during the preparation of its inventory, the campus then was to publish a notice in the *Federal Register* about the affiliated remains and cultural items. Other tribes then had 30 days to contest the campus's affiliation determination. If another tribe did not contest the affiliation within 30 days, the campus was required to return the remains or cultural items within 90 days of receiving the affiliated tribe's repatriation claim.

However, in many instances, campuses did not affiliate remains or cultural items with a tribe during their inventories. Under NAGPRA, tribes can request additional information from these campuses to learn about their collections and determine whether they want to request the return of affiliated remains and cultural items. However, campuses' historical processes for determining affiliation have been lengthy. The timely affiliation of remains and cultural items is critical because it allows tribes to move forward with the repatriation process. When campuses return remains and cultural items through repatriation, tribes may choose to rebury the remains because some tribes believe that their ancestors' spiritual journeys have been disrupted by their exhumation and that reinternment allows them to rest.

[4] Completion of certain types of inventories was required by 1993.

CalNAGPRA Creates Additional Opportunities for Tribes to Obtain Remains and Cultural Items and Increases Oversight of Campuses

Enacted in 2001, CalNAGPRA is intended to provide a mechanism for California tribes that do not have federal recognition to submit repatriation claims to agencies and museums, including university campuses. Thus, CalNAGPRA covers all California tribes, including both federally recognized tribes in California and those California tribes not so recognized. Many California tribes are not currently federally recognized in part because the federal government cancelled its recognition of them beginning in the 1940s, although some have since regained their recognition. According to a publication on the National Park Service's website, the government decided after World War II to forcibly assimilate Native Americans into mainstream society by terminating the federal recognition of tribes and the federal government's accompanying obligations to them and by relocating Native Americans from rural reservation communities to urban areas.

The Legislature amended CalNAGPRA in 2018 in response to allegations from stakeholders, including tribes, that the university had a poor record of completed repatriations and that participation by tribes in the repatriation process had been limited. According to the amendment's author, these allegations focused primarily on Berkeley's lack of significant repatriations from its NAGPRA collection over the 20 years since it completed its inventory of Native American remains and cultural items in the 1990's. The 2018 amendment required the Regents of the University of California (Board of Regents), or its designee, to implement a systemwide NAGPRA policy by January 2020. This policy describes, in greater detail than federal or state law provides, the appropriate treatment and repatriation of Native American remains and cultural items. In addition, the 2018 amendment required that the Board of Regents, or its designee, establish a systemwide committee and that each campus subject to NAGPRA establish a campus committee to review repatriation activity.

The Legislature further amended CalNAGPRA in 2020. As Table 1 shows, the 2020 amendments to CalNAGPRA improved the repatriation process; for example, it expanded the types of evidence allowed for establishing affiliation. This amendment requires each campus with a collection subject to CalNAGPRA to complete an inventory or to update its preliminary inventory of all its California Native American human remains and certain funerary objects. Similarly, the amendment requires each campus with possession or control over other types of cultural items, such as sacred objects, to create a preliminary summary of these items. Under the 2020 amendment, campuses had until April 1, 2022, to submit their preliminary inventory and summary (inventory) to the NAHC, a state entity that identifies and catalogs Native American cultural resources. Each campus must consult with tribes during the inventory process to allow the tribes to share concerns about how the campus plans to conduct its inventory activities. For example, a tribe might wish to have members present when a campus performs inventory activities on the remains of its ancestors.

Additionally, the 2020 amendment to CalNAGPRA required campuses to consult with both federally recognized California tribes and California tribes that are not federally recognized to affiliate the remains and cultural items in a campus's collection, among other purposes. Further, the 2020 amendments to CalNAGPRA

Table 1
The Legislature Made Key Changes to CalNAGPRA in 2020 to Elevate the Tribal Perspective

CALNAGPRA BEFORE THE 2020 AMENDMENT	CALNAGPRA AFTER THE 2020 AMENDMENT
The State must apply its repatriation policy to be consistent with federal NAGPRA.	The State must apply its repatriation policy to be consistent with federal NAGPRA and resolve all ambiguities in the law in favor of California tribes.
"Tribal traditional knowledge" was not defined.	Defines tribal traditional knowledge as knowledge systems embedded and safeguarded in the traditional culture of California tribes.
Tribal traditional knowledge was not used as evidence to establish affiliation.	Tribal traditional knowledge alone is sufficient evidence for establishing affiliation.
Following consultation, agencies must complete an inventory of remains and cultural items.	Agencies must consult with California tribes at multiple stages of the inventory process and inventories become final upon the concurrence of affected tribes.

Source: State law.

required campuses to make these affiliation connections through consultations throughout the inventory process. Campus consultation with tribes during the inventory process is the critical step for ensuring that campuses repatriate remains and cultural items to all California tribes in a timely manner.

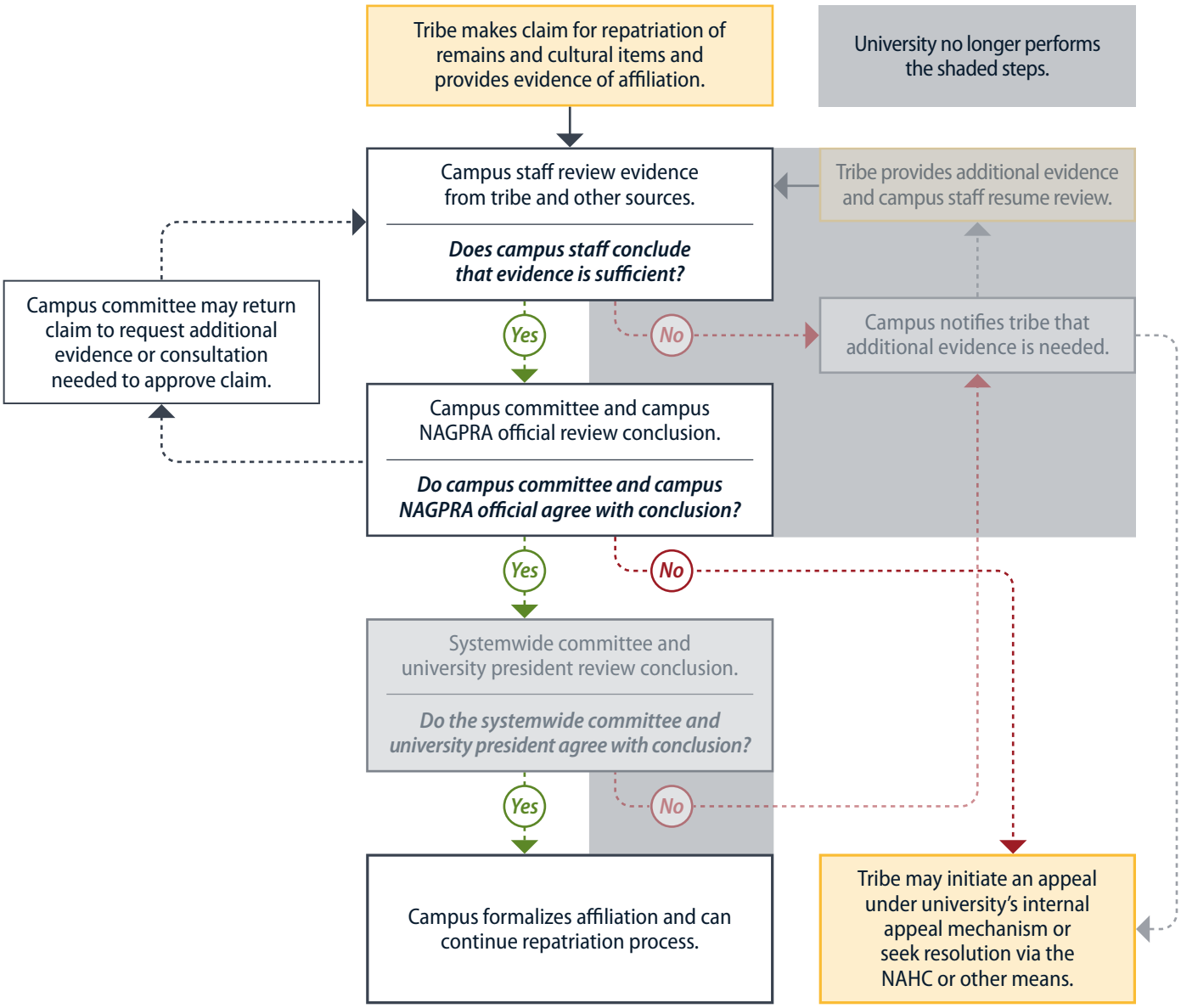
The University Has Recently Updated Its NAGPRA Processes

In response to the 2018 amendments to CalNAGPRA, the Office of the President issued a systemwide NAGPRA policy in December 2021. Although the Office of the President was late implementing this policy, it attributes the delay to its efforts to consult appropriately with Native American tribes and the California Native American Heritage Commission (NAHC). Although it did not address all concerns that the NAHC expressed, the Office of the President demonstrated appropriate consultation by receiving feedback and making corresponding adjustments to its required policy in several areas, such as establishing restrictions on the testing and research that campuses can perform on human remains.

The university's updated NAGPRA policy also streamlined the process by which campuses review and approve repatriation claims. Figure 1 displays some of those key changes that facilitate repatriation. For example, the university previously required both the systemwide NAGPRA committee and the university president to approve repatriation claims, but now approval from a campus's NAGPRA committee and its chancellor is the final step before repatriation. Further, the university's NAGPRA policy creates a standardized process for campuses to follow when processing repatriation claims.

The university has made additional changes to its policy and processes in response to recommendations we made in our 2020 report on the university's compliance with NAGPRA. Specifically, our 2020 report found that the Office of the President's policy and limited oversight resulted in inconsistent practices for returning remains

Figure 1
The University Has Recently Streamlined Its Process for Establishing Affiliation of Remains and Cultural Items


Tribe makes claim for repatriation of remains and cultural items and provides evidence of affiliation.
University no longer performs the shaded steps.
Campus staff review evidence from tribe and other sources.
Does campus staff conclude that evidence is sufficient?
Tribe provides additional evidence and campus staff resume review.
Yes
No
Campus notifies tribe that additional evidence is needed.
Campus committee may return claim to request additional evidence or consultation needed to approve claim.
Campus committee and campus NAGPRA official review conclusion.
Do campus committee and campus NAGPRA official agree with conclusion?
Yes
No
Systemwide committee and university president review conclusion.
Do the systemwide committee and university president agree with conclusion?
Yes
No
Campus formalizes affiliation and can continue repatriation process.
Tribe may initiate an appeal under university's internal appeal mechanism or seek resolution via the NAHC or other means.

Source: Federal regulations and the Office of the President's NAGPRA policies.

and cultural items among the university campuses we reviewed. For example, we found that Berkeley requested additional evidence of affiliation from tribes that other campuses did not require, in part because the policy and oversight by the Office of the President was limited. Our 2020 report also contained several recommendations to improve the university's NAGPRA processes. As part of this current audit, we reviewed whether the university had implemented three recommendations from that previous report that it had not notified us that it had implemented as of January 2022. As Table 2 shows, the university has now implemented all the recommendations we made in our previous report. University policy now describes how campuses should prioritize certain categories of evidence when evaluating evidence of affiliation, and we found that Berkeley no longer requests additional evidence and that it has approved a repatriation claim it previously denied.

Table 2
The University Has Implemented Recommendations From Our Previous Report

	SUMMARY OF RECOMMENDATIONS	IMPLEMENTED?
1	To ensure that NAGPRA processes are timely and consistent across all campuses as the Legislature intended, the Office of the President should publish its final systemwide NAGPRA policy.	**YES** *Policy issued in December 2021*
2	To increase oversight and ensure that campuses consistently review claims, the Office of the President should require campuses to provide biannual reports about all NAGPRA activity to the systemwide committee.	**YES** *Requirement added September 2020*
3	To ensure appropriate tribal representation, the Office of the President should ensure that membership of campus and systemwide committees includes the tribal representation state law requires.	**YES**
4	To increase transparency of the campuses' NAGPRA collections, the Office of the President should determine an appropriate method of communicating with tribes about missing remains and artifacts.	**YES**

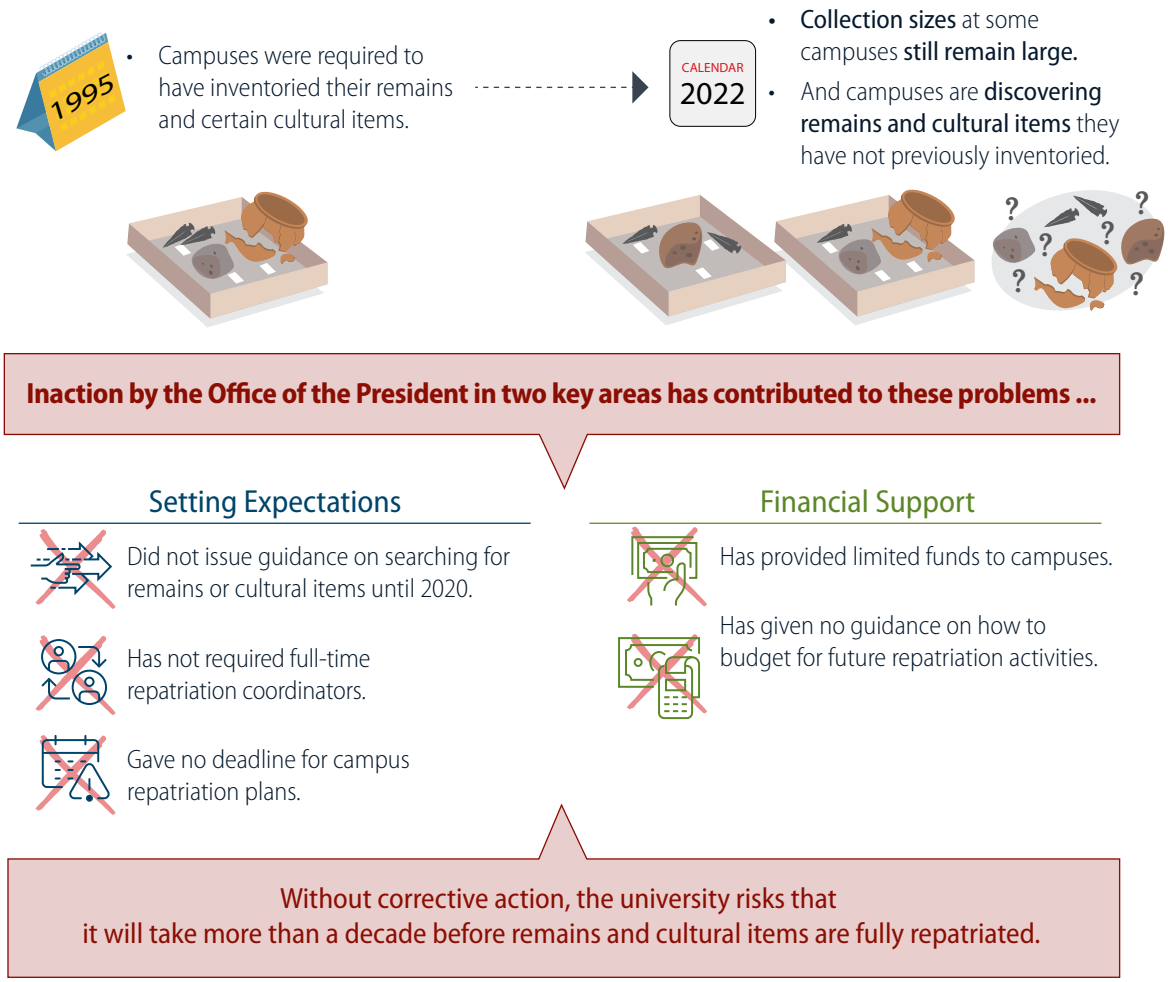
Source: Analysis of the university's NAGPRA policy, campus biannual NAGPRA reports, systemwide and campus committee membership, and our 2020 audit report.

Audit Results

The Office of the President Has Not Prioritized Returning Remains and Cultural Items to Tribes

Despite the university's historical struggle to prioritize compliance with NAGPRA, the Office of the President has not taken adequate action to ensure that campuses have the guidance and resources necessary to repatriate their collections in a timely manner. As Figure 2 shows, this inaction by the Office of the President has contributed to delays in repatriation.

Figure 2
The Office of the President Has Not Prioritized the Return of Remains and Cultural Items to Tribes


1995
Campuses were required to have inventoried their remains and certain cultural items.
CALENDAR
2022
Collection sizes at some campuses still remain large.
And campuses are discovering remains and cultural items they have not previously inventoried.
Inaction by the Office of the President in two key areas has contributed to these problems ...
Setting Expectations
Did not issue guidance on searching for remains or cultural items until 2020.
Has not required full-time repatriation coordinators.
Gave no deadline for campus repatriation plans.
Financial Support
Has provided limited funds to campuses.
Has given no guidance on how to budget for future repatriation activities.
Without corrective action, the university risks that it will take more than a decade before remains and cultural items are fully repatriated.

Source: NAGPRA, university NAGPRA policy, interviews with the Office of the President, campus inventory data, and campus NAGPRA reports.

Moreover, the Office of the President has not yet ensured that it consistently prioritizes future NAGPRA efforts. As we discuss further in this section, the Office of the President does not require campuses to hire full-time repatriation coordinators even though the university's NAGPRA policy specifies that these coordinators carry primary responsibility for a campus's compliance with the university's NAGPRA policy. As a result, some campuses with large NAGPRA collections have not hired individuals full-time in this position.

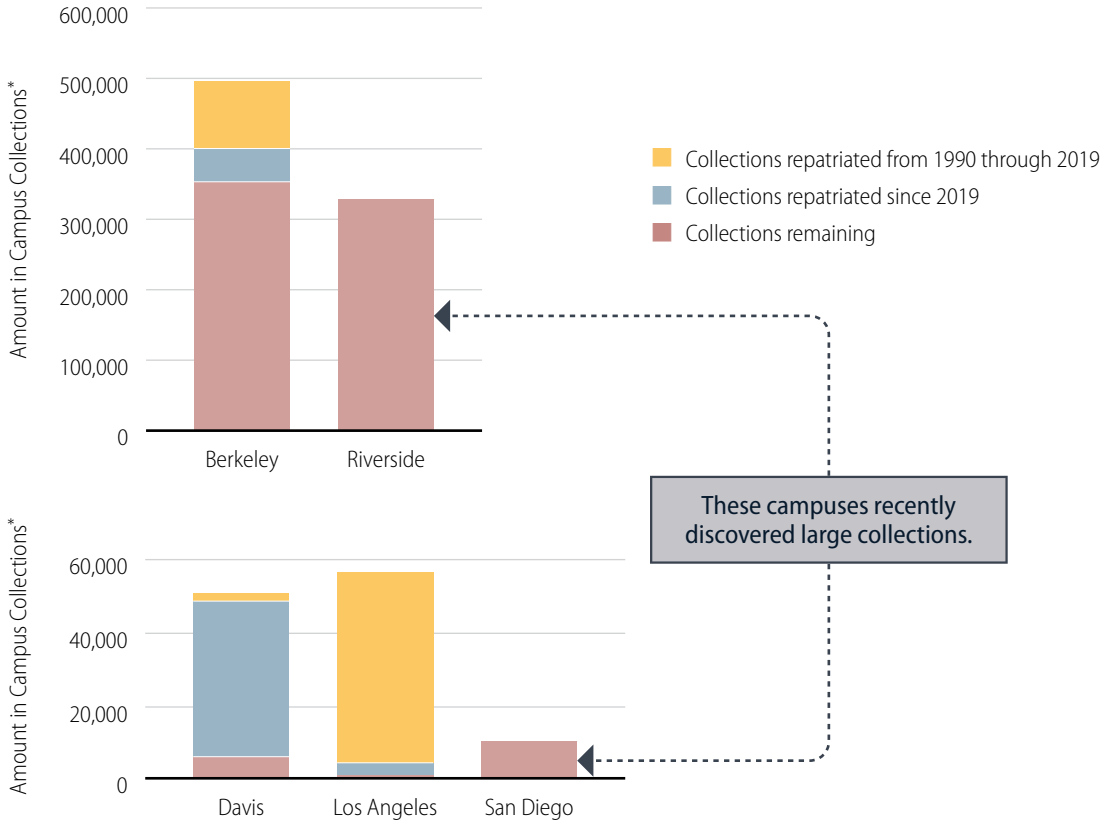
Further, the university's processes for ensuring that campuses allocate the funding needed to successfully implement NAGPRA remain inadequate, and the Office of the President has not committed to providing campuses with financial resources to fund repatriation efforts after fiscal year 2022–23. Finally, the Office of the President has not ensured that campuses prioritize completing their repatriation implementation plans (repatriation plans), which identify the strategies the campuses will use to facilitate proactive and timely repatriation. Until the Office of the President demonstrates the leadership necessary in these areas, the university runs the risk of repeating its historical mistakes and unnecessarily delaying the return of remains and cultural items to tribes.

Campuses Have Historically Struggled to Inventory and Repatriate Their NAGPRA Collections

More than 30 years after the passing of NAGPRA, many campuses still have large collections of Native American remains and cultural items because of their historical struggle to inventory and repatriate these collections. As Figure 3 shows, among the campuses with remains and cultural items, only Davis and Los Angeles have repatriated the majority of their NAGPRA collections.[5] In contrast, Berkeley, Riverside, and San Diego continue to manage large collections. For example, Berkeley excavated thousands of Native American remains and cultural items before NAGPRA passed in 1990. As a result, the campus amassed a NAGPRA collection with hundreds of thousands of items, a large portion of which it has yet to repatriate. Additionally, although Santa Barbara repatriated hundreds of items in its NAGPRA collection in October 2022, the size of its known collection is growing because the campus only recently committed the resources necessary to review all of the remains and cultural items in its control. For this reason, we lack assurance as to the size of Santa Barbara's NAGPRA collection, and we do not include that campus in Figure 3. Lastly, as we describe in the next section, two of the campuses we reviewed—Riverside and San Diego—have recently discovered large portions of their NAGPRA collections. These discoveries are associated with researchers who, in some cases, chose to retain the remains and cultural items to further their personal research instead of reporting them to campus officials for return to the tribes to which they belong.

[5] For a discussion of the historical repatriation efforts of the Davis and Los Angeles campuses, see our previous report: *Native American Graves Protection and Repatriation Act: The University of California Is Not Adequately Overseeing Its Return of Native American Remains and Artifacts*, Report 2019-047, June 2020.

Figure 3
Berkeley, Riverside, and San Diego Maintain Large Collections More Than 30 Years After NAGPRA Was Passed



Source: Office of the President, campus inventory and summary data, and campus NAGPRA reports.

Note: We lack assurance regarding the size of Santa Barbara's NAGPRA collection, as the campus is still reviewing its repository of cultural items. For this reason, we do not include Santa Barbara on this graphic.

* Campuses are responsible for counting their NAGPRA collections and have different methods for doing so. The amounts presented here are approximate and are based on the information campuses provided to our team.

Following the passing of NAGPRA, campuses did not perform the actions necessary to ensure that they had completely inventoried and repatriated their collections of remains and cultural items. Our 2020 audit report found that although Berkeley had repatriated some of its sizeable NAGPRA collection, the campus's historical processes for reviewing repatriation claims extended the time required for their return. During the two years since that report's release, Berkeley has approved many of the repatriation claims it has received as well as a claim that it previously denied. However, because the campus maintains a NAGPRA collection with hundreds of thousands of items, its recent repatriation activity has returned only a very small portion of the remains and cultural items to tribes.

Similarly, Riverside's approach toward complying with NAGPRA has been inadequate and has contributed to the work it still needs to complete. For example, the campus historically relied on its anthropology department, which has several competing responsibilities, to respond to NAGPRA's requirements. Only in 2021 did the campus hire a NAGPRA program manager dedicated to ensuring compliance with NAGPRA. This program manager has since discovered a large collection of remains and cultural items that the campus was previously unaware of and thus did not inventory. Additionally, this program manager explained that, to adhere to the university's NAGPRA policy, she reviewed these remains and cultural items that the campus had not previously affiliated to a tribe and was able to make an affiliation determination. When a campus affiliates remains or cultural items with a tribe, it must take action to inform the tribe about the affiliation. Tribes are then aware of the campuses with which they may file repatriation claims. Accordingly, Riverside's previous decisions regarding affiliation unnecessarily delayed the return of these remains and items.

Additionally, the university has not historically devoted the resources necessary for returning remains and cultural items to tribes. Until September 2021, the Office of the President required the campuses to identify their own funding to respond to NAGPRA requirements, and it did not oversee the amount of resources campuses allocated to fund their repatriation activities. As a result, some campuses, such as Santa Barbara, failed to adequately fund these activities. Not surprisingly, Santa Barbara now faces additional obstacles in repatriating its collections. Specifically, although NAGPRA required campuses to complete inventories of their collections by 1995, Santa Barbara is still reviewing its collection and identifying materials eligible for repatriation nearly 30 years later.

When we asked both current and former staff in charge of Santa Barbara's collection about this significant deficiency, they explained that although they requested funding and resources, campus leadership ultimately did not provide the funding necessary to review all items in the campus's collection. The campus has recently hired additional staff to review its collection. However, it estimates that this inventory will still take approximately five years to complete. Until the campus finishes this review, it cannot know the size of its NAGPRA collection and tribes will be unable to request repatriation of those uninventoried remains and cultural items.

The Office of the President's NAGPRA policy now outlines concrete steps for the proactive repatriation of campus collections. However, the size of these collections—as well as the limited resources the Office of the President and the campuses have dedicated to this responsibility—means that *it will likely take many years of sustained effort before campuses have successfully repatriated their NAGPRA collections.* In fact, at their present pace, some campuses will not fully complete the return of their collections for more than a decade.

Campuses Have Used Different Approaches to Repatriating Their Recently Discovered Collections

Although NAGPRA has been in effect for more than 30 years, some campuses are still discovering remains and cultural items that are in their possession. Specifically, Riverside and San Diego recently found large holdings of remains and cultural items that they did not know about. These campuses state that they are responsible for repatriating only a portion of these collections while other institutions are responsible for the rest. Appendix A provides a description of how Riverside discovered its one collection and how San Diego discovered its two collections.

According to the university's NAGPRA policy, once a campus discovers a previously unknown collection, it must take steps to facilitate that collection's repatriation. These discoveries may negatively affect campus relations with tribal communities as each new discovery of remains and cultural items triggers campus outreach to tribes for consultation, per university policy. Tribal members told us that this process can be painful. In one case, a campus told us it found bone fragments of an ancestor whose remains had already been repatriated. In these cases, tribal members told us that some tribes will again need to rebury their ancestors. By being thorough in their efforts to locate any unreported remains and cultural items, campuses can reduce the number of times tribes must go through this process.

In the past, researchers from institutions sent portions of remains from their collections to Riverside and San Diego for testing, generally to determine their age. Riverside and San Diego told us that they had found some of these remains inappropriately stored. Despite the relatively similar circumstances through which these campuses found the remains, Riverside and San Diego initially used different approaches to return them to agencies that had loaned the items to their researchers. Specifically, Riverside told us it would not notify tribes when it transferred remains or cultural items back to another institution that loaned the remains, instead relying on that other institution to begin consultation and move forward with repatriation. In contrast, San Diego communicated directly with both tribes and controlling institutions. The campus began hosting monthly meetings with both groups during which they could ask questions and help determine a timely approach for repatriation. San Diego also offered to educate institutions unfamiliar with NAGPRA and the consultation process.

Riverside explained that its NAGPRA committee recommended changes to Riverside's process during a discussion in November 2021 on how to respond to new discoveries. As a result, the campus stated that it now takes an approach similar to San Diego's: it invites tribes and controlling institutions to a virtual meeting and notifies tribes when it intends to physically transfer remains and cultural items to the institution that made the loan. Both San Diego and Riverside intend to repatriate remains and cultural items when those institutions do not respond to invitations to proceed with repatriation or if they deny responsibility for repatriation.

Until recently, the Office of the President did not provide guidance to campuses on how to locate remains and cultural items and on how to address them if found. However, in response to CalNAGPRA, the Office of the President published an

interim NAGPRA policy in July 2020 that directed campuses to locate any remains and cultural items that they had not been aware of. The university's current NAGPRA policy similarly requires campuses to send their departments an annual communication to raise awareness of the policy's requirements. The policy also requires campuses to send communications, such as surveys, within two years of the implementation of the policy and every three to five years thereafter to remind the campus community that they are required to report any holdings.

In response to these changes in policy, campuses have taken steps to identify all of their holdings of remains and cultural items. For example, after the university issued one version of its NAGPRA policy in July 2020, most campuses we reviewed sent awareness letters to all members of the campus community and sent surveys to departments to assist them in identifying any remains or cultural items in their collection.[6] The letters provided an overview of the Office of the President's policy, such as its prohibition of research on remains and cultural items without tribal approval, and procedures as to how all staff and students could report improperly maintained or newly discovered remains and cultural items. The surveys asked whether a department or unit maintained any unidentified human remains and if staff or students in the department had remains or cultural items in offices, laboratories, or other department spaces. Campuses noted that they may find additional remains and cultural items as they continue to raise awareness about the Office of the President's policy and send surveys.

The Office of the President plans to deepen efforts to identify any additional remains or cultural items that campuses have not yet found. In its current policy, the Office of the President requires repatriation coordinators to review remains and cultural items in facilities associated with departments, such as archaeology or biology, that historically engaged in studies that could involve remains. The Office of the President told us it is currently developing a plan for implementing this physical search process, and it plans to consult with tribes and other relevant stakeholders as well. The Office of the President intends for this process to identify any unknown collections of remains and cultural items.

Although the university's current NAGPRA policy provides instruction on how to locate unknown remains and cultural items, it does not provide specific guidance on how campuses should respond to these discoveries, particularly when other institutions are involved. The Office of the President agrees that the campuses should use a consistent approach when notifying tribes of remains received from other institutions. Tribal members have noted that it is difficult to navigate consultation and repatriation with multiple campuses or institutions if each uses a different approach to responding to these discoveries. *Given that different campuses may have possession of some of the same tribe's remains and cultural items, it is important that the Office of the President ensure that tribes have the same experience no matter which campus they are working with.*

6 San Diego did not send out an awareness letter in 2021, but it plans to send an awareness letter in the fall of 2022. Berkeley has not sent out its campuswide survey yet, but it plans to do so by the end of 2022.

Campuses Have Used Inconsistent Processes When Consulting With Tribes

CalNAGPRA creates specific requirements for tribal participation when campuses inventory their CalNAGPRA collections. Nonetheless, we found that most campuses used different processes to consult with tribes and that one campus has not yet started consultations. As we explain in the Introduction, the Legislature amended CalNAGPRA in 2020 to require campuses to update a preliminary inventory of all human remains and certain funerary objects in their collections as well as other cultural items, such as sacred objects. CalNAGPRA further required campuses to submit these inventories to the NAHC within 90 days of completion but no later than by April 1, 2022, although campuses might revise them past this deadline.

Of critical importance, CalNAGPRA requires campuses to engage in consultation with California tribes during the creation of these inventories as well as after their submission to the NAHC. By doing so, campuses can more quickly connect the remains and cultural items in their NAGPRA collections with specific tribes by informing tribes which campuses control remains or cultural items with which the tribe may be affiliated. With this knowledge, tribes can then file a claim and initiate the repatriation process. Therefore, campus compliance with CalNAGPRA's revised consultation requirements helps promote the timely return of the remains and cultural items to California tribes.

However, the Office of the President did not ensure that campuses initiated consultation with tribes during the creation of their preliminary inventories as required by CalNAGPRA. Instead, according to the Office of the President, it encouraged repatriation coordinators to prioritize the completion of their inventories to meet CalNAGPRA's deadline of April 1, 2022, for submission to the NAHC. The Office of the President also stated that it believed that adhering to the submission deadline would promote transparency as it would require campuses to make their collection information available through the NAHC. When we asked the Office of the President about CalNAGPRA's consultation requirements, it stated that given the size of the campus collections and the length of time it can take to consult with tribes, performing the required consultations before the deadline was not feasible. While we agree that it would have been difficult for campuses to consult with all California tribes on their collections by April 1, 2022, the Office of the President could have assisted campuses by providing guidance on how to best fulfill CalNAGPRA's consultation requirements.

Lacking concrete guidance from the Office of the President, campuses used different approaches to consult with tribes when completing their inventories, with some campuses more proactively engaged in consultation. For example, shortly after December 2021 when the university finalized a list of all California tribes, which was based on information provided by the NAHC, Berkeley, Davis, and Los Angeles sent an invitation to all California tribes who might be affiliated with their collections to engage in the consultation CalNAGPRA requires. These invitations included information about the campuses' collections, allowing tribes to determine whether they wished to consult with the campus regarding specific remains or cultural items. Berkeley and Los Angeles stated they have since consulted with some responding tribes through this process although this consultation is generally ongoing. Similarly, San Diego began consulting with tribes on its two recently discovered collections shortly after discovering them.

In contrast, other campuses have taken few or no steps to initiate consultations. For example, while Riverside had initiated consultation on some of its collection before the deadline in state law, it did not send out letters to the required California tribes inviting consultation until after the April deadline. According to Riverside, its efforts to consult with tribes before the statutory deadline was complicated by its recent discovery of an additional collection of remains and cultural items, which it only recently finished cataloging. Of greater concern, although Santa Barbara has hosted multiple listening sessions with California tribes, staff at the campus stated that they have yet to initiate the consultation CalNAGPRA requires. Instead, it has focused its recent consultation efforts on repatriating two large collections of remains and cultural items already affiliated with a local tribe. However, the campus may control remains and cultural items eligible for repatriation by other tribes. *Until the campus initiates the consultation CalNAGPRA requires, tribes may be unable to determine whether the campus controls remains and cultural items eligible for repatriation.*

Given that the deadline for the submission of campuses' inventories has passed, the Office of the President should focus on ensuring that campuses use a consistent approach to consult with tribes. Under CalNAGPRA's consultation requirements, campuses have an ongoing responsibility to proactively initiate consultation when creating their inventories and to rely on tribal traditional knowledge to determine affiliation for unaffiliated materials. Thus, it is critical for the Office of the President to ensure that all campuses initiate consultations with tribes and establish affiliation for all remains and cultural items in their collections to ensure their timely return.

The Office of the President Does Not Require Campuses to Hire Full-Time Repatriation Coordinators

The university's NAGPRA policy requires campuses with remains and cultural items to designate a repatriation coordinator who will carry primary responsibility for ensuring compliance with the university's policy. These responsibilities include consulting with tribes, ensuring that the campus follows the repatriation process, and facilitating tribes' access to remains and cultural items. Repatriation coordinators must also submit biannual reports of campus repatriation activities to the Office of the President and campus and systemwide NAGPRA committees, and they must maintain documentation of these activities, which include correspondence, consultations, and inventories.

Although repatriation coordinators play a critical role in overseeing and advancing repatriation, Santa Barbara does not employ a full-time employee in this position. Instead, the designated individual also has full-time responsibilities as a campus administrator. Santa Barbara does employ a NAGPRA program manager, who facilitates and conducts the campus's daily repatriation activities under the supervision of the repatriation coordinator. However, the campus does not require that position to have experience with consultation or building relationships with tribes. As we describe later, university policy requires repatriation coordinators to have such experience.

Although the Office of the President has not required repatriation coordinators to be full-time in its NAGPRA policy, it agreed with us that repatriation coordinators should be full-time. The Office of the President stated that it had not realized it would become

an issue if its policy did not require full-time repatriation coordinators. However, although the Office of the President now supports the idea of full-time repatriation coordinators, it believes there are some circumstances in which repatriation coordinators can work less than full time. For example, it believes a repatriation coordinator can be less than full time as long as repatriation is his or her main job.

Further, the repatriation coordinators employed by Santa Barbara and Riverside did not meet all qualifications that the Office of the President established. The university requires repatriation coordinators to have an in-depth understanding of and direct experience with consulting and with building and maintaining positive working relationships with tribes, as well as in-depth knowledge of NAGPRA and CalNAGPRA. However, Santa Barbara's repatriation coordinator stated he did not have any of these key experiences when Santa Barbara's chancellor appointed him. According to the chancellor, he appointed the repatriation coordinator because the individual seemed devoted to moving repatriation forward and improving relations with tribes. Similarly, although Riverside's former repatriation coordinator had experience building and maintaining positive relationships with tribes through his experience as a tribal council member, he did not meet other requirements for the position. Specifically, the former repatriation coordinator acknowledged that he has not participated in the entire repatriation process and has only a general understanding of the NAGPRA process. In addition, the former repatriation coordinator was not full-time and had other responsibilities as an associate professor. Riverside only appointed its NAGPRA program manager to be its full-time repatriation coordinator in September 2022.[7] In contrast, we found that Berkeley and San Diego hired repatriation coordinators who met all of the university's requirements.

The Office of the President has taken some steps to provide the Riverside and Santa Barbara repatriation coordinators with information and training to address their lack of experience. Because some campuses had difficulties finding repatriation coordinators who met policy requirements, the Office of the President believed it was best to find individuals who are interested in and have a demonstrated commitment to moving repatriation forward. The Office of the President conducts bimonthly meetings with campus repatriation coordinators to provide advice and allow campuses to learn from one another. It is also working to create a training program for its repatriation coordinators that will include presentations on the repatriation process, consultations with tribes, and the legal requirements of NAGPRA and CalNAGPRA.

Nonetheless, *given the significant importance of ensuring timely repatriation activity, we believe that the repatriation coordinator position should be a full-time position filled by individuals who meet all requirements outlined in the university's policy.* When repatriation coordinators do not have experience with NAGPRA or consultation, they may make mistakes and delay repatriation because of their unfamiliarity with the process. For example, Riverside accidentally began repeating the affiliation process for a claim after it had already completed that process years earlier. Campus officials acknowledged that the error occurred because its campus NAGPRA staff were

[7] Because Riverside replaced its repatriation coordinator in September 2022, which was after we completed our fieldwork, we did not review the background of the new individual.

unfamiliar with the details and nuances of the process. The campus told us that it regrets the mistake; however, the error delayed repatriation by four months. When repatriation coordinators lack the necessary time and expertise, these types of delays can occur and erode the university's relationships with tribes.

The Office of the President Has Not Set a Deadline for Campuses to Complete Their Repatriation Plans

The Office of the President first required campuses to create repatriation plans in its July 2020 interim policy, and it similarly requires these plans in its current policy. The repatriation plans must include specific timelines and strategies to facilitate repatriation. The Office of the President also requires campuses to develop these plans to demonstrate how they will proactively return remains and cultural items in a timely manner. Specifically, the repatriation plans must include strategies for outreach to affiliated tribes that have not yet requested or taken possession of remains as well as for contacting institutions with control of remains that the campus holds. Campuses must develop these plans in coordination with their campus NAGPRA committee and must submit them to the systemwide NAGPRA committee once completed.

The Office of the President provided funding to campuses for two fiscal years beginning in 2021–22, some of which it intended to fund the creation of the repatriation plans. Table 3 displays funding the Office of the President provided to the campuses with NAGPRA collections. The Office of the President expected these campuses to use the funds to implement its NAGPRA policy and to advance repatriation, including the development of repatriation plans. However, as of mid-October 2022, the campuses with NAGPRA collections have not completed their plans, despite obtaining approval for the funding in September 2021.

Table 3
The Office of the President Provided Campuses With Funding to Facilitate Their NAGPRA Planning

	FISCAL YEAR		
CAMPUS	2021–22	2022–23	TOTAL PROVIDED
Berkeley	$653,000	$1,559,000	**$2,212,000**
Riverside	105,000	89,000	**194,000**
San Diego	109,000	103,000	**212,000**
Santa Barbara	223,000	216,000	**439,000**

Source: Office of the President and campus budget documentation.

The Office of the President explained that it did not establish a deadline for campuses to complete their plans because the NAHC had not yet made nominations for the NAGPRA committees as state law requires and it wanted to allow campuses time to focus on completing the inventories required by CalNAGPRA. However, in the absence of a deadline, none of the campuses have completed their repatriation plans.

Berkeley, San Diego, and Santa Barbara are still in the process of developing their plans, while Riverside was preparing to finalize its plan at the same time we ended our fieldwork. Riverside presented its draft plan to its campus NAGPRA committee in August and expected to complete the plan sometime in October 2022, while Santa Barbara and San Diego told us that they expect to complete their plans by December 2022 and January 2023, respectively. Berkeley told us it expects to complete its plan by June 2023.[8] Although the Office of the President recently checked in with the campuses on the development of their repatriation plans during the bimonthly repatriation coordinator meetings, it has been more than two years since it required campuses to develop the plans and strategies and more than one year since campuses formed their committees. The Office of the President should have required campuses to first develop repatriation plans after releasing its interim policy and before beginning work on repatriation.

The university is unlikely to fully repatriate campus collections for at least another decade. Figure 4 provides an overview of the time that has elapsed since Congress passed NAGPRA in 1990 and the campuses' projection of when they will fully repatriate their collections. The campuses indicated that full repatriation of remains and cultural items would take several years because of the large size of their collections. Further, their projections do not take into account constraints on tribes that could further lengthen the repatriation process, such as a lack of resources for consultation and reburial, which we discuss in the next section. Their projections also do not take into account tribal members having to take time off work to attend consultations and limited tribal capacity to respond to multiple consultation requests from other California institutions. Thus, the projections campuses provided are optimistic estimates. However, Berkeley's estimate appears to be overly optimistic with regard to how quickly it will be able to complete repatriation. For example, Riverside has thousands fewer remains and cultural items than Berkeley but estimated that it will take five years longer than Berkeley to complete repatriation. Given Berkeley's lack of a repatriation plan, the size of its collection, and the rate of its repatriations since 2020, we believe the campus will need more than 10 years to completely repatriate its collection. Also, given that some campuses that currently have remains and cultural items have repatriated only very small portions of their collections, as the text box shows, they will need repatriation plans to guide their efforts over many years. Without requiring campuses to develop their repatriation plans by a given deadline, the Office of the President risks that campuses will not take a proactive and strategic approach to return remains and cultural items to tribes in a timely manner.

Percentage of Campus Collections Repatriated to Tribes

- Berkeley—29%
- Davis—95%
- Los Angeles—99%
- Riverside—Less than 1%*
- San Diego—Less than 1%*

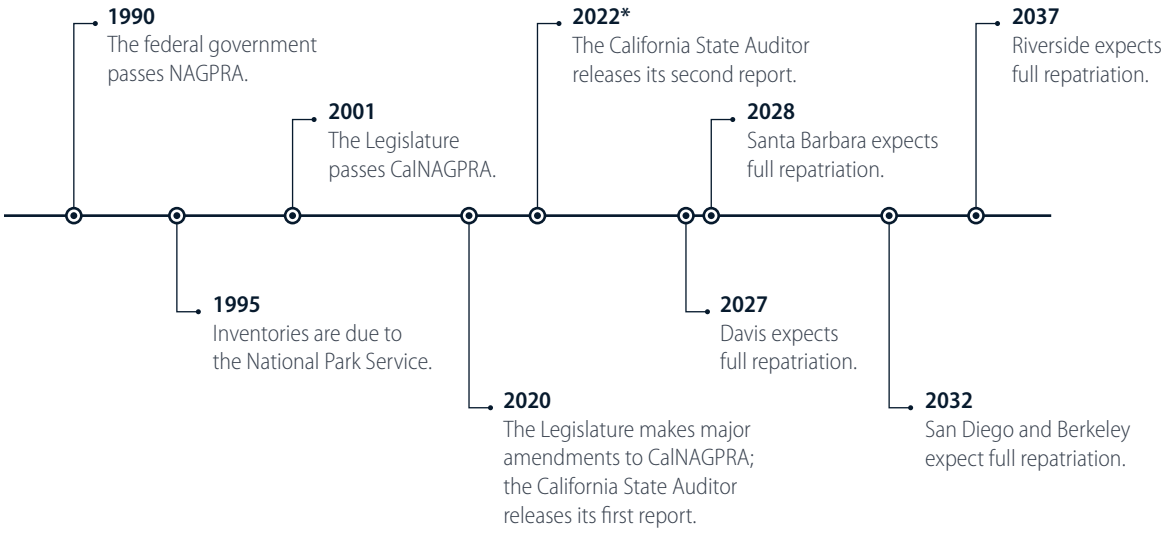
Source: Office of the President, campus inventory data, and campus NAGPRA reports.

Note: As previously mentioned in this report, we lack assurance regarding the size of Santa Barbara's collection. For this reason, we do not include them in this text box.

* These campuses recently discovered large collections.

[8] Berkeley told us that it will take the campus time to complete its plan due to the size of its program, the fact that it will need to collaborate with its campus committee in developing its plan, and because it is currently in the process of working through consultations.

Figure 4
Some Campuses Expect Repatriation of Their Collections to Take at Least a Decade



Source: State law, federal law, our 2020 and current audit reports, and interviews with campus officials.

Note: All of the campuses provided estimates of the year they expect to complete repatriations. These estimates do not take into account constraints on tribes that could further lengthen the repatriation process, such as a lack of resources for consultation and reburial.

* Los Angeles stated that its repatriation is complete pending the resolution of a tribal disagreement and submission of a claim for remains from the Southwestern United States.

The Office of the President Has Not Ensured That Campuses Dedicate Adequate Funds Toward Timely Repatriation

Although the Office of the President requires campuses to include detailed budgets in their repatriation plans, it has not equipped them to develop adequate budgets and funding to move repatriation forward. In its NAGPRA policy, the Office of the President requires the campuses to estimate the costs necessary to repatriate their collections but otherwise provides no guidance other than the requirement to set aside funding to financially assist tribes with related costs, for example, travel and reburial assistance. Further, the Office of the President expects campuses to use their own finances to fund repatriation after fiscal year 2022–23 when the two-year funding it is currently providing runs out. Until campuses adequately plan the steps they will take to repatriate their collections and develop detailed budgets that identify the resources necessary, they will likely make slow progress in returning their collections to tribes.

When we asked campuses how they budget for their NAGPRA activity and their efforts to facilitate timely repatriation, they indicated that their budgets are based on informal estimates related to their existing activities and conversations with other campuses. For example, Berkeley estimates that it will require at least $1.5 million annually to fund its repatriation activities; it based this estimation on conversations with its NAGPRA staff and other museums in April 2021; however, there is no documentation supporting the estimate. Santa Barbara believes it will need $350,000 annually to fund its repatriation efforts, explaining that it derived this amount by consulting with other campuses' repatriation coordinators and reviewing their budget structures.

Other campuses also provided informal estimates. San Diego noted that it will need at least $170,000 annually, while Riverside estimates it will need approximately $165,000 each year to fund repatriation efforts. San Diego based its estimation on the compensation of its repatriation coordinator and other expected costs, and Riverside based its estimation on the increased travel it believes it will need to make in the coming years to courier remains to tribes and other institutions, and the expenses for tribes to visit the campus for consultation. We expected campuses to provide detailed budgets in their repatriation plans that identify the resources they need to complete timely repatriation, but none of the campuses have completed a thorough analysis of their budgetary needs. By developing strategies to reach out to tribes and creating a timeline for full repatriation in their plans, as the university's NAGPRA policy requires, campuses will be better equipped to develop realistic estimates of the costs necessary to carry out their responsibilities.

Of further concern is that campuses have not planned for sustainable, long-term sources of funding. Berkeley dedicated $470,000 towards NAGPRA efforts in fiscal years 2020–21 and 2021–22 but told us that its chancellor has not explicitly stated whether this funding will continue annually. Further, as we indicate earlier, Berkeley believes that it will need at least $1.5 million annually to fund its repatriation efforts. The campus explained that in addition to the $470,000 in campus funding, it plans to rely on different funding sources as they become available, such as NAGPRA grants and additional campus funds. In a letter from the campus chief financial officer, Santa Barbara committed $350,000 annually until it completes repatriation; however, the campus repatriation staff do not know where the campus will obtain this funding. Santa Barbara told us that it has limited funding resources to address all campus needs because of limitations on its enrollment and student population. San Diego leadership has committed to continued repatriation funding after fiscal year 2022–23, but it is unsure how long funding of its efforts will continue. Its chancellor has decided to review and make determinations on the campus's NAGPRA budget every three years.

Although Riverside estimates it will take at least 15 years to fully repatriate its collection, the campus told us its chancellor is not comfortable extending its NAGPRA program manager position past an additional three years or making it a permanent position, given the campus's financial situation. Because the program manager plays a key role in facilitating repatriation, we expected Riverside to continue funding the position until it completes repatriation. Additionally, Riverside acknowledged that it has not yet discussed how much the campus will allocate annually towards its repatriation efforts or where the funds will come from. These ad-hoc approaches to budgeting and identifying funding sources will only hinder the campuses' ability to repatriate items in a timely manner, which could erode their relationships with tribes.

Uncertainty surrounding long-term planning and funding for campus repatriation activities indicates a lack of commitment by the Office of the President to prioritize the return of collections to tribes. Given the importance of NAGPRA and CalNAGPRA, along with the significant requirements these laws impose on the university, the Office of the President could set aside funding for campuses' repatriation efforts each year, providing them with a guaranteed source of funding and needed resources. However, it has chosen not to dedicate such funding going forward. According to the Office of the President, it has not done so because it believes campuses are responsible for

their collections rather than the university system as a whole. The Office of the President added that campuses have the funding necessary to fulfill these responsibilities and they have the mechanisms to request additional resources from the Office of the President, should these resources be judged necessary. Because of the uncertainty surrounding the funding necessary to support campuses' repatriation efforts, we believe this approach is shortsighted and may undermine recent efforts by the university to further repatriation.

Another reason that dedicating funding for repatriation is so critical is that tribes frequently need financial assistance to engage in the repatriation process. Specifically, many tribes do not consider repatriation complete until reburial takes place, but they do not currently have lands in their possession to rebury their ancestors. Because the federal government does not recognize many California tribes, these tribes do not own land protected by the federal government. Some campuses have just begun to address these needs. For example, Davis and Los Angeles have reburied some ancestors on campus land, while Santa Barbara is currently searching for land in consultation with tribes. Davis has also facilitated reburial between a private landowner and a tribe.

Further, campus repatriation staff and tribal members told us that many tribes do not have the funds to engage in consultation or reburial. Although some tribes—such as those with gaming operations—have significant resources to facilitate repatriation, others do not. The Office of the President recognizes this concern and suggested campuses use portions of the two-year funding to assist tribes with consultation costs, such as funding for travel and accommodations during visits to campus collections. However, campuses lack long-term plans to provide these types of resources. Without adequate funding to help tribes reclaim their ancestors, the university will likely fall short of meeting the intent of NAGPRA and CalNAGPRA.

Requirements for NAGPRA Committee Members From the University

- A graduate degree in Archeology, Anthropology, Native American Studies, Ethnic Studies, Law, Sociology, Environmental Studies, or History.
- A minimum of five years working in the applicable field of study.
- At least one member of each campus committee must be affiliated with a Native American Studies Program.
- At least two members of the systemwide committee must be affiliated with a Native American Studies Program.

Source: State law.

Additional Flexibility in CalNAGPRA's Requirements for NAGPRA Committee Membership Would Strengthen Those Committees

The Legislature amended CalNAGPRA in 2018 to require that the university establish a systemwide NAGPRA committee, and it further amended CalNAGPRA in 2019 to require that this committee have an equal number of voting representatives from Native American tribes and the university. The 2018 amendment also required campuses with NAGPRA collections to establish similar committees. CalNAGPRA requires the NAHC to nominate members to the systemwide and campus NAGPRA committees. The text box summarizes the background and experience that state law requires for NAGPRA committee members from the university.

However, as Table 4 shows, several university members on the campus committees, with the exception of the Los Angeles committee, do not meet these requirements. For example, four of the six campus committees include at least one member from the university who lacks a graduate degree in a required subject area. NAHC attributed this issue to the difficulty campuses have in meeting CalNAGPRA's requirements for committee members. All committee members from California tribes possess the qualifications required by state law.

Table 4
Most Campus Committees Had Members From the University Who Do Not Meet CalNAGPRA Requirements

			REASON FOR NOT MEETING REQUIREMENTS		
CAMPUS	TOTAL MEMBERS	NUMBER OF COMMITTEE MEMBERS FROM THE UNIVERSITY WHO DO NOT MEET REQUIREMENTS	AFFILIATED WITH NATIVE AMERICAN STUDIES PROGRAM*	HAS GRADUATE DEGREE IN REQUIRED FIELD	HAS FIVE YEARS EXPERIENCE IN REQUIRED FIELD
Berkeley	6	2	✓	X	✓
Davis	6	1	✓	X	✓
Los Angeles	6	0	✓	✓	✓
Riverside	6	3	X	✓	✓
San Diego	6	1	✓	X	✓
Santa Barbara	6	3	X	X	✓

✓	All members meet requirements.
X	One or more members do not meet requirements.

Source: State law and publicly available information regarding committee members' education and experience.

* CalNAGPRA requires at least one university member of a campus committee to be affiliated with an American Indian or Native American Studies program. Because no university members at Riverside or Santa Barbara are affiliated with such a program, its members are out of compliance with CalNAGPRA requirements.

Although some committee members do not have the degrees specified in state law, we found that committee members generally have diverse backgrounds that likely strengthen the university's committees. For example, the committee at Davis includes one member with a graduate degree in Linguistics, an area of study not covered by state law. However, this member specializes in Native American languages. Given that campus committees make determinations regarding repatriation claims and that state law highlights linguistic evidence as a form of evidence that can support claims, this member's specialization in Native American linguistics strengthens the knowledge and expertise of the committee. Similarly, the committee at San Diego includes one member who serves as the director of the campus Intertribal Resource Center but lacks a graduate degree in the fields specified in state law. This member has professional experience in supporting the academic needs of the campus's Native American students. Because this individual has experience promoting inclusion and outreach, she adds both diversity and perspectives that might otherwise be lacking on the committee. Therefore, this individual can improve the campus's consultation efforts. In fact, our

review found that all members of the campus NAGPRA committees who did not meet the background and education requirements in state law nonetheless had professional experiences that can make positive contributions to the committees.

Additional flexibility in state law would better empower the NAHC to nominate those candidates best suited for the university's NAGPRA committees. The NAHC noted that some candidates who are well suited to serve on the committees would be deemed ineligible because they do not satisfy the stringent qualification requirements. As a result, the NAHC is considering potential legislative changes that would give more flexibility to the CalNAGPRA committee member requirements. The NAHC stated that its priority is to nominate members who have an understanding of repatriation laws, who have experience working successfully with tribal communities, and who are committed to facilitating repatriation as outlined in CalNAGPRA.

Because our review found that committee members who do not meet the requirements in the law nonetheless can add helpful diversity and knowledge to their respective committees, we conclude that state law is likely too limited. Providing for additional types of educational background and expertise for committee members in state law will allow for additional diversity and perspective on the university's NAGPRA committees. This change will also allow the NAHC flexibility in nominating those candidates it feels are best suited for committee membership.

Please refer to the section beginning on page 3 to find the recommendations that we have made as a result of these audit findings.

We conducted this performance audit in accordance with generally accepted government auditing standards and under the authority vested in the California State Auditor by Government Code section 8543 et seq. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,

MICHAEL S. TILDEN, CPA
Acting California State Auditor

November 17, 2022

Appendix A

Summary of Campus Discoveries of Previously Unreported Human Remains and Cultural Items

Riverside and San Diego have discovered previously unreported remains and cultural items in the past several years, as the university has begun to better prioritize the return of remains and cultural items to tribes. Riverside discovered one collection while San Diego discovered two separate collections. In these cases, the campuses were not aware of the remains and cultural items either because a professor did not disclose them or because the campus did not know it had remains and cultural items eligible for repatriation.

Riverside Radiocarbon Laboratory Collection

Riverside ran a radiocarbon laboratory until it closed the lab in the early 2000s. Riverside would receive fragments of remains and cultural items and perform tests on a portion of them, generally to determine their age. Certain of these tests turned the tested portion of the remains and cultural items to residue, such as ash or liquid. We refer to these tested remains and cultural items as *samples* and these tests as *destructive*.

Riverside first discovered the radiocarbon laboratory collection in 2016, when staff found human remains located inside materials a faculty member had recently transferred to the campus. The faculty member, now deceased, was a director of the radiocarbon laboratory, and he donated the lab's records to the campus's library. Library staff identified some samples in these records, including some of human remains. They then notified campus administration about their discovery and determined that the samples fell under the requirements of NAGPRA. Riverside noted that the samples had been disrespectfully stored and organized. The first set of the radiocarbon laboratory collection contained close to 4,800 samples, with 109 of the samples coming from Native American ancestors.

Riverside gave us an account of how it discovered a second set of samples from the radiocarbon laboratory in February 2022 in an off-campus storage facility the campus rented. Staff noted that they were previously unaware of this facility. In fact, when they tried to arrange a meeting to review the campus NAGPRA collections, the curator of Riverside's collections would plan for a visit but then cancel and request a rescheduled date.[9] After repeated delays, the program manager told us she notified campus leadership that she was having issues accessing the collection. Campus leadership provided access to the collections, including the storage facility, which contained additional samples from the radiocarbon laboratory. Riverside's program manager stated that the campus recently completed its review of this second set. The campus conducted an internal review into its NAGPRA compliance to better understand the situation, which it completed in July 2022.

[9] Riverside's curator responsibilities include organizing the management of California archaeological resources information and managing Riverside's archaeological collections.

San Diego's Previously Unreported Collections

The University of California at San Diego (San Diego) learned of one of its unreported collections of NAGPRA materials after two institutions—the private University of San Diego and the Museum of Us—informed it that remains and cultural items in San Diego's control were located in a closet. A consulting firm that provides services to institutions with NAGPRA collections found boxes containing remains and artifacts at the University of San Diego in February 2020. The other two institutions notified the San Diego campus of the collection in March 2020. The institutions linked San Diego to the collection because a late San Diego faculty member assembled the collection when he was an employee from 1944 to 1979. The faculty member bequeathed the collection to the Museum of Us in 1973, and the museum donated it to the University of San Diego in 2004. The University of San Diego held the remains and cultural items for 16 years, with only one individual from its Anthropology Department aware of their existence. All three institutions agreed to collaborate and work towards jointly repatriating the collection.

According to a campus report, San Diego discovered another collection of remains in a researcher's laboratory in June 2020. Specifically, the researcher in San Diego's Anthropology Department gathered remains from different institutions across the United States throughout her career. She received the remains from other university researchers, who sent them to her lab for various types of testing to study them. The professor never reported the collection of remains and samples to campus administration. Instead, another professor discovered the remains when cleaning out the lab in order to transition the space for his use and reported the discovery to campus leadership. San Diego then discovered additional remains in the researcher's office. The current repatriation coordinator informed us that the researcher disrespectfully placed remains throughout the lab. The campus informed us that they did not facilitate a review into possible misconduct by the researcher because she retired in 2018.

Appendix B

Scope and Methodology

Section 8028 of the Health and Safety Code requires the California State Auditor to conduct audits of the university's compliance with NAGPRA and CalNAGPRA commencing in 2019 and 2021, and to report its findings to the Legislature. This is the second of these two reports.

To obtain an understanding of the requirements of NAGPRA and CalNAGPRA, we reviewed relevant state and federal laws and regulations. Using factors such as the size of the campuses' NAGPRA collections, recent discoveries of remains and cultural items, and the need to follow up with Berkeley on its repatriation practices, we selected four campuses—Berkeley, Santa Barbara, San Diego, and Riverside—and the Office of the President to review. We performed audit work related to their adherence to the requirements in NAGPRA and CalNAGPRA.

To determine whether these campuses followed the requirements in NAGPRA, we reviewed a selection of claims that the campuses received from tribes from September 2019 through December 2021. Specifically, we reviewed a total of eight repatriation claims and campus responses to the claims and found that the campuses followed federal regulations that govern the repatriation process. We also reviewed the campuses' overall repatriation processes and staffing. In addition, we reviewed the manner in which campuses and the Office of the President responded to newly discovered collections of remains and cultural items, including whether and how each campus interacted with tribes to coordinate repatriation.

To determine whether these campuses followed the requirements in CalNAGPRA, we reviewed the campuses' and Office of the President's responses to new requirements added to the law in 2020. We identified changes that the law required the Office of the President to make to the university's policies and found that it appropriately made these alterations. We also reviewed how each campus created its inventories required by CalNAGPRA and whether it provided this information to the NAHC in a timely manner. As part of this review, we determined the extent to which each campus consulted with tribes when creating its inventories and assessed whether the Office of the President exercised adequate oversight over these processes. Additionally, to test the accuracy of the inventories campuses submitted to the NAHC, we compared them to the campuses' collections data. We found that the information campuses provided in these inventories generally aligned with their collections data. To the extent that campuses had formulated any plans to facilitate repatriation, we reviewed those plans as well. Finally, we identified the resources that each campus and the Office of the President provided to facilitate repatriation and assessed whether they were sufficient.

To ensure that the university had implemented the recommendations we made in our first report, we reviewed its responses to those recommendations. Specifically, we reviewed the university's current NAGPRA policy to ensure that it included additional detail and direction to campuses in several areas of concern in our previous report. We also reviewed the membership of campus and systemwide

NAGPRA committees to ensure that they included appropriate tribal representation and that the members had appropriate experience as specified in state law. Finally, we reviewed reports that campuses provide to the Office of the President twice each year to ensure that they have followed university policy related to reporting their NAGPRA activity.

Assessment of Data Reliability

The U.S. Government Accountability Office, whose standards we are statutorily required to follow, requires us to assess the sufficiency and appropriateness of computer-processed information that we use to support findings, conclusions, and recommendations. In performing this audit, we relied on data provided by the campuses we reviewed to understand the campuses' NAGPRA collections. To evaluate these data, we performed electronic testing of the data and attempted to test the accuracy and completeness of the data.[10]

During our review, we learned that Riverside, Santa Barbara, and San Diego have not consistently maintained supporting documentation for their collections data, such as records created when the campuses collected remains and cultural items. Therefore, we were unable to perform accuracy and completeness testing on the data provided by these campuses. Additionally, our 2019 audit identified errors in the accuracy of Berkeley's NAGPRA collection data. As a result, the NAGPRA collections data provided by Berkeley, Riverside, Santa Barbara, and San Diego are not sufficiently reliable for the purposes of our audit. Nevertheless, because these data represent the only source for this information, we present a breakdown in the Audit Results of the size of campus NAGPRA collections. Although the problems we identified with the data may affect the precision of some of this information, there is sufficient evidence in total to support our findings, conclusions, and recommendations.

[10] In order to be respectful of tribal concerns about disturbance of their ancestors, we did not view remains or cultural items as part of these activities.

UNIVERSITY OF CALIFORNIA

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OFFICE OF THE PROVOST AND
EXECUTIVE VICE PRESIDENT FOR ACADEMIC AFFAIRS

OFFICE OF THE PRESIDENT
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

October 31, 2022

Michael S. Tilden, CPA
Acting California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, California 94814

Dear Acting State Auditor Tilden:

Thank you for the opportunity to review and respond to the draft audit report on the Native American Graves Protection and Repatriation Act.

We sincerely appreciate the report from your office which is fully aligned with the University of California's legal, moral, and ethical commitments to consult with Native American tribes and to repatriate ancestral remains and cultural items. The University is making a stronger commitment to repatriating ancestral remains and cultural items in a prompt and respectful manner. To strengthen this ongoing effort, the University intends to implement each recommendation to the University made by your office.

We will continue to look for ways to make real and meaningful progress in our efforts. We look forward in the coming months to keeping you and our many other partners in this effort apprised of our actions.

Sincerely,

Michael T. Brown, Ph.D.
Provost and
Executive Vice President for Academic Affairs

cc: President Drake
Senior Vice President Bustamante
Systemwide Deputy Audit Officer Hicks